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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

2007 AUG 28 PM 1:30
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
EASTERN DIVISION
UNITED STATES OF AMERICA,

Plaintiff,

BY: v.

PREMIER INDUSTRIES, INC.,

Defendant.

Case No. **BD CV 07 - 01092 SGL (OPx)**

**CONSENT DECREE OF
PLAINTIFF AND DEFENDANT**

CONSENT DECREE OF PLAINTIFF AND DEFENDANT

Plaintiff United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), concurrently with lodging this Consent Decree, has filed a complaint (the "Complaint") in this action pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b), alleging that Premier Industries, Inc. ("Defendant" or "Premier") violated the CAA and the federally approved California State Implementation Plan ("SIP"), including South Coast Air Quality Management District (the "District") Rule 1175, by operating its

CONSENT DECREE OF PLAINTIFF AND
DEFENDANT

1 expanded polystyrene foam block manufacturing facility in Chino, California (the
2 "Facility") in violation of the emissions limitations and control requirements in
3 Rule 1175, as incorporated in the SIP.

4 Defendant does not admit any liability to the United States arising out of the
5 transactions or occurrences alleged in the Complaint.

6 On or about May 1, 2007, the Facility, along with other assets of Defendant,
7 were transferred to Insulfoam LLC, a wholly-owned subsidiary of Premier.
8 Immediately thereafter, Insulfoam LLC ("Insulfoam") was acquired by Carlisle
9 SynTec Incorporated ("Carlisle") a Delaware corporation. Insulfoam is currently a
10 wholly-owned subsidiary of Carlisle.

11 The United States, Premier and Insulfoam, collectively the "Parties,"
12 recognize, and the Court by entering this Consent Decree finds, that this Consent
13 Decree has been negotiated by the Parties in good faith and will avoid litigation
14 among the Parties and that this Consent Decree is fair, reasonable, and in the public
15 interest.

16 NOW, THEREFORE, before the taking of any testimony, without the
17 adjudication of any issue of fact or law, and with the consent of the Parties, IT IS
18 HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

19 I. JURISDICTION AND VENUE

20 1. This Court has jurisdiction over the subject matter of this action and
21 over the Parties pursuant to section 113(b) of the CAA, 42 U.S.C. § 7413(b), and
22 28 U.S.C. §§ 1331 and 1345. Venue lies in this District pursuant to 28 U.S.C.
23 § 1391(b) and 42 U.S.C. § 7413(b), because the violations alleged in the Complaint
24 are alleged to have occurred in this judicial district. For purposes of this Decree, or
25 any action to enforce this Decree, Defendant consents to the Court's jurisdiction
26 over this Decree and any such action and over Defendant and consents to venue in
27 this judicial district.
28

1 2. For purposes of this Consent Decree, Defendant agrees that the
2 Complaint states claims upon which relief may be granted pursuant to
3 Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and Rule 1175 of the SIP.

4 3. Notice of the commencement of this action has been given to the
5 California Air Resources Board, as required by Section 113(b) of the CAA,
6 42 U.S.C. § 7413(b) and to the District.

7 **II. APPLICABILITY AND BINDING EFFECT**

8 4. Insulfoam agrees unconditionally to the jurisdiction of this Court, and
9 to venue in this judicial district and agrees that the Complaint states claims upon
10 which relief may be granted. Insulfoam further agrees to be bound by the terms
11 and obligations of this Consent Decree, jointly and severally with Defendant, and
12 shall not challenge this Court's jurisdiction to enter and enforce this Consent
13 Decree. Insulfoam shall be entitled to Defendant's rights and protections that are
14 specifically provided in this Consent Decree. Any obligation that is imposed upon
15 Defendant in this Consent Decree may be satisfied by Insulfoam and compliance
16 with any such obligation by Insulfoam shall be deemed compliance by Defendant
17 and compliance by Defendant shall be deemed compliance by Insulfoam.

18 5. The provisions of this Consent Decree shall apply to and be binding
19 upon the United States, and upon Defendant and Insulfoam, and their respective
20 subsidiaries, divisions, successors and assigns and other entities or persons
21 otherwise bound by law.

22 6. Except as provided in Paragraph 4 above, no transfer of ownership or
23 operation of the Facility, whether in compliance with the procedures of this
24 Paragraph or otherwise, shall relieve Defendant or Insulfoam of their obligation to
25 ensure that the terms of the Decree are implemented. At least 30 days prior to any
26 such transfer, Defendant or Insulfoam shall provide a copy of this Consent Decree
27 to the proposed transferee and shall simultaneously provide written notice of the
28 prospective transfer, together with a copy of the proposed Title V permit transfer

1 agreement, to EPA Region IX and the United States Department of Justice
2 ("DOJ"), in accordance with Section XV (Notices) of this Decree. Any attempt to
3 transfer ownership or operation of the Facility without complying with this
4 Paragraph constitutes a violation of this Decree.

5 7. Defendant and Insulfoam shall provide a copy of this Consent Decree
6 to their respective officers, employees, and agents whose duties might reasonably
7 include compliance with any provision of this Decree, as well as any contractor
8 retained to perform work or to provide services required under this Consent
9 Decree. Defendant and Insulfoam shall condition any such contract upon
10 performance of the work in conformity with the terms of this Consent Decree.

11 8. In any action to enforce this Consent Decree, neither Defendant nor
12 Insulfoam shall raise as a defense the failure by any of its officers, directors,
13 employees, agents or contractors, or each other, to take any actions necessary to
14 comply with the provisions of this Consent Decree.

15 III. DEFINITIONS

16 9. Terms used in this Consent Decree that are defined in the CAA or in
17 regulations promulgated pursuant to the CAA shall have the meanings assigned to
18 them in the CAA or such regulations, unless otherwise provided in this Decree.
19 Whenever the terms set forth below are used in this Consent Decree, the following
20 definitions shall apply:

21 A. "Advanced RTO Control Technology" shall mean any emission
22 control technology that may be demonstrated after the Effective Date
23 of this Consent Decree to comply with Rule 1175, and which may be
24 subject to testing pursuant to Paragraph 19.

25 B. "Bead Aging Operation" shall mean the enclosure at the Facility
26 where expanded beads (pre-puff) are transferred to and kept for
27 stabilization and drying;
28

1 C. "Complaint" shall mean the complaint filed concurrently by the
2 United States with the lodging of this Consent Decree;

3 D. "Consent Decree" or "Decree" shall mean this Decree;

4 E. "Day" shall mean a calendar day unless expressly stated to be a
5 working day. In computing any period of time under this Consent
6 Decree, where the last day would fall on a Saturday, Sunday, or
7 federal holiday, the period shall run until the close of business of the
8 next working day;

9 F. "Defendant" shall mean Premier Industries, Inc. Unless
10 otherwise provided, references to "Defendant" in Sections V through
11 XXII of this Consent Decree shall be deemed and interpreted to also
12 include Insulfoam;

13 G. "Demonstrated Compliant Bead" shall mean raw EPS
14 (expandable polystyrene) bead with a pentane content less than or
15 equal to 3.6% by weight;

16 H. "Effective Date" shall mean the date upon which this Decree is
17 entered by the Court;

18 I. "EPA" shall mean the United States Environmental Protection
19 Agency and any of its successor departments or agencies;

20 J. "Facility" shall mean the EPS manufacturing and processing
21 facility located at 5635 Schaefer Avenue in Chino, San Bernardino
22 County, California, formerly owned and operated by Premier and
23 currently owned and operated by Insulfoam;

24 K. "Manufacturing Emissions" shall mean any emissions of VOC
25 that occur during the Manufacturing Operation;

26 L. "Manufacturing Operation" shall mean every step of the
27 processing of an expandable polystyrene product from the delivery of
28

1 the raw material until, but not including, the storage of the final
2 product;

3 M. "Newly-Identified EPS Bead" or "NIEPS Bead" shall mean any
4 EPS bead with a pentane content greater than 3.6% by weight, that
5 may be demonstrated after the Effective Date of this Consent Decree
6 to comply with Rule 1175 and which may be subject to testing
7 pursuant to Paragraph 19;

8 N. "Non-Demonstrated Compliant Bead" shall mean raw EPS bead
9 with a pentane content greater than 3.6% by weight, and that is not
10 Newly-Identified EPS Bead;

11 O. "Paragraph" shall mean a portion of this Decree identified by an
12 Arabic numeral;

13 P. "Parties" shall mean the United States, Premier and Insulfoam;

14 Q. "RTO" shall mean the regenerative thermal oxidizer system
15 installed at the Facility for the purpose of controlling Manufacturing
16 Emissions and which is identified as SSE-8-4K-95X-RTO, natural gas
17 fired, 2MMBTU;

18 R. "Rule 1175" shall mean District Rule 1175 as amended by the
19 District in 1994 and approved by EPA into the SIP in 1994;

20 S. "Section" shall mean a portion of this Decree identified by a
21 Roman numeral;

22 T. "United States" shall mean the United States of America, acting
23 on behalf of EPA;

24 U. "VOC" shall mean volatile organic compound.

25 IV. CIVIL PENALTY

26 10. Within 30 days after the Effective Date of this Consent Decree,
27 Defendant shall pay a civil penalty to the United States of \$326,000, together with
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1 interest accruing from the date on which the Consent Decree is lodged with the
2 Court, at the rate specified pursuant to 28 U.S.C. § 1961 as of the date of lodging.

3 11. Defendant shall pay the civil penalty due by FedWire Electronic
4 Funds Transfer ("EFT") to the United States Department of Justice in accordance
5 with written instructions to be provided to Defendant, following lodging of the
6 Consent Decree, by the Financial Litigation Unit of the United States Attorney's
7 Office for the Central District of California. At the time of payment, Defendant
8 shall send a copy of the EFT authorization form and the EFT transaction record,
9 together with a transmittal letter, which shall state that the payment is for the civil
10 penalty owed pursuant to the Consent Decree in United States v. Premier
11 Industries, Inc., and shall reference the civil action number and DOJ case number
12 90-5-2-1-08413, to the United States in accordance with Section XV (Notices) of
13 this Decree and by e-mail to and to:

14 EPA Cincinnati Finance Office
15 26 Martin Luther King Drive
Cincinnati, Ohio 45268.

16 12. Defendant shall not deduct the civil penalty paid under this Section in
17 calculating its federal income tax.

18 V. COMPLIANCE

19 13. Not later than August 1, 2007, Defendant shall comply with Rule 1175
20 with respect to the Facility, including, but not limited to, the demonstration
21 requirements of Rule 1175(c)(2) and the plan submission requirements of
22 Rule 1175(c)(3).

23 VI. INJUNCTIVE RELIEF

24 14. Beginning no later than the date of lodging and continuing until
25 termination of this Consent Decree, Defendant shall:

26 A. At all times during the Manufacturing Operation,
27 continuously operate the Facility's RTO at a set point temperature of at
28 least 1570⁰ F. The RTO operating temperature shall be continuously

1 monitored and recorded. Such recorded results shall include, but not
2 be limited to, circular chart recordings containing the oxidizing
3 chamber operating temperature for the RTO. The circular chart
4 recordings shall clearly indicate the dates and times of continuous
5 temperature recordings, and each individual chart recording shall be
6 for a maximum of seven consecutive calendar days.

7 B. At all times when there are beads present in the Bead Aging
8 Operation, maintain the air temperature in the Bead Aging Operation
9 of the Facility at a 24 hour average temperature of no less than 85⁰ F.
10 The air temperature in the Bead Aging Operation shall be
11 continuously monitored and results recorded. Such recorded results
12 shall include, but not be limited to, electronic recordings of the
13 operating temperature for the Bead Aging Operation. The
14 temperatures will be measured and recorded no less frequently than
15 hourly, and the electronic recordings shall clearly indicate the dates
16 and times of each temperature measurement.

17 C. 1) At all times when there are beads present in the Bead Aging
18 Operation, maintain the Bead Aging Operation at a negative pressure
19 that complies with EPA Method 204 requirements for a Permanent
20 Total Enclosure (0.013 mm Hg or 0.007 inches of water).

21 2) In addition, Defendant shall continuously operate fixed magnehelic
22 gauges designated as, the Silver Tank magnehelic and the Blue Tank
23 magnehelic and achieve the following minimum negative pressure
24 limits (with an allowable variance of +0.5 inches of water) during all
25 times that a pre-expander and/or a block mold is in operation:

- 26 1. Silver Tank magnehelic: -1.0 inches of water
- 27 2. Blue Tank magnehelic: -1.0 inches of water.

1 Defendant shall continuously operate the Booster Blower magnehelic
2 and achieve the following minimum negative pressure limit (with an
3 allowable variance of +0.5 inches of water) during all times that a pre-
4 expander and/or a block mold is in operation and/or when there are
5 beads present in the Bead Aging Operation:

6 Booster Blower magnehelic: -1.0 inches of water.

7 During the times that a magnehelic is required to be operated,
8 Defendant shall monitor negative pressure readings of the magnehelic
9 once daily, by manually reading and recording, or by electronically
10 recording, the magnehelic every 10 seconds for a 5 minute period. The
11 10 second magnehelic readings shall be averaged and the result
12 recorded as a 5 minute average. Defendant shall maintain records of
13 the daily 5 minute average readings for each magnehelic. These
14 recordings shall clearly indicate the date and time of each set of
15 magnehelic readings. Defendant shall also determine monthly the
16 accuracy of the magnehelics with an electronic manometer that
17 measures the static pressure at a second port located adjacent to the
18 magnehelic's port. Any magnehelic that shows a static pressure
19 deviation from the electronic manometer of greater than 10% must be
20 immediately removed and replaced. Records of all accuracy testing,
21 removal and replacement of magnehelics shall be maintained. The
22 records shall be signed by the person conducting the testing and the
23 person removing or replacing the magnehelics.

24 15. Beginning no later than the date of lodging of this Consent Decree and
25 continuing through July 31, 2007, Defendant shall process no more than 25,000
26 pounds per day of Non-Demonstrated Compliant Bead. Any Non-Demonstrated
27 Compliant Bead that Defendant processes pursuant to this paragraph shall not
28 exceed a maximum pentane content of 4.7%.

1 16. Beginning, no later than the date of lodging of this Consent Decree
2 and continuing through July 31, 2007, Defendant shall process no more than
3 80,000 pounds per month of Non-Demonstrated Compliant Bead. Any Non-
4 Demonstrated Compliant Bead that Defendant processes pursuant to this paragraph
5 shall not exceed a maximum pentane content of 4.7%.

6 17. Beginning on or before August 1, 2007, and continuing through the
7 date of termination of this Consent Decree, Defendant shall process only
8 Demonstrated Compliant Bead at the Facility, except to the extent that Defendant
9 is required by the District to employ Non-Demonstrated Compliant Bead in the
10 conduct of a source test or other compliance demonstration for purposes of
11 periodically demonstrating Defendant's compliance with Rule 1175, or as provided
12 in Paragraph 19.

13 18. No later than August 1, 2007 and continuing through the date of
14 termination of this Consent Decree, Manufacturing Emissions and all post-
15 manufacturing emissions of VOC shall be less than 2.4 lbs per 100 lbs of raw
16 material processed. To determine the emissions, it shall be assumed that all
17 "blowing agent" (the liquid, gaseous or solid material that facilitates the formation
18 of a cellular product from raw polymeric material) is released from the product, and
19 a mass balance equation shall be used. If the residual pentane, the amount
20 contained in the final product, is or exceeds 2.4 lbs per 100 lbs of raw material,
21 then the Facility is out of compliance. If the amount of residual pentane is less
22 than 2.4 lbs per 100 lbs of raw material, then all uncontrolled emissions (e.g. those
23 not captured and destroyed during the Manufacturing Operation) shall be added to
24 the residual pentane to determine if the emissions are less than 2.4 lbs per 100 lbs
25 of raw material.

26 19. If during the pendency of this Consent Decree, there is identified an
27 NIEPS Bead or Advanced RTO Control Technology ("Advanced RTO
28 Technology") that may ensure compliance with this Consent Decree and Rule

1 1175, the Parties agree to the following testing protocol to determine whether the
2 NIEPS Bead or Advanced RTO Technology may be used in lieu of Demonstrated
3 Compliant Bead under Rule 1175 and this Consent Decree. Defendant may, upon
4 submission of a test plan and written approval by EPA Region IX, conduct a test in
5 compliance with the approved test plan to ensure compliance with Rule 1175 and
6 this Consent Decree.

7 Prior to conducting any such tests, Defendant shall provide to the District,
8 EPA Region IX and DOJ, pursuant to Section XV (Notices), a test plan setting
9 forth Defendant's reasonable and substantiated basis for its belief that the NIEPS
10 Bead or Advanced RTO Technology will comply with this Decree and Rule 1175.
11 The test plan shall set-forth the purpose of the test, the testing parameters,
12 including but not limited to, duration of the test, the operating parameters and
13 conditions, and the bead type to be used. Testing shall include all of the operating
14 parameters necessary to comply with Rule 1175.

15 Defendant may not conduct testing with NIEPS Bead or of an
16 Advanced RTO Technology unless and until it receives written approval from the
17 Director of the Air Division, Region IX. Defendant shall conduct testing approved
18 by EPA consistent with the parameters articulated in Defendant's test plan, if
19 approved by EPA, or consistent with alternate parameters as set-forth by EPA in its
20 approval.

21 Within 30 days of testing, Defendant shall submit the following
22 information to EPA Region IX and DOJ pursuant to Section XV (Notices): 1) test
23 results from the approved testing, which document, at a minimum: the emissions
24 that occurred during testing, the RTO operating parameters, including temperature,
25 and the Bead Aging Operation air temperature and negative pressure, 2) the
26 amount of EPS bead processed and the pentane content, 3) the duration of the
27 testing, and 4) any non-compliance with the Decree or Rule 1175 which occurred
28 during the testing. Defendant shall maintain records of all such tests in accordance

1 with the provisions of Section VIII. Provided that Defendant complies fully with
2 the provisions of this Paragraph 19, Defendant shall not be liable for stipulated
3 penalties for a violation of this Consent Decree that occurs during and is directly
4 related to approved testing of NIEPS Bead or Advanced RTO Technology.

5 20. If, during the duration of this Consent Decree and pursuant to the
6 above Paragraph 19, EPA determines that there exists NIEPS Beads or Advanced
7 RTO Technologies that would achieve compliance with Rule 1175 and this Decree,
8 Defendant may, pursuant to Section XVIII (Modification) pursue a modification of
9 this Consent Decree.

10 21. Defendant shall at all times after termination of this Consent Decree
11 comply with all applicable requirements in the CAA and Rule 1175.

12 VII. REPORTING REQUIREMENTS

13 22. Defendant shall submit the following reports; each report submitted
14 under this Section shall be signed by a responsible official of Defendant, as defined
15 at 40 C.F.R. § 70.2, and include the following certification:

16 I certify under penalty of law that this document and all attachments
17 were prepared under my direction or supervision in accordance with a
18 system designed to assure that qualified personnel properly gather and
19 evaluate the information submitted. Based on my inquiry of the
20 person or persons who manage the system, or those persons directly
21 responsible for gathering the information, the information submitted
22 is, to the best of my knowledge and belief, true, accurate, and
23 complete. I am aware that there are significant penalties for
24 submitting false information, including the possibility of fine and
25 imprisonment for knowing violations.

26 23. This certification requirement does not apply to emergency or similar
27 notifications where compliance would be impractical.
28

1 24. Within 30 days of the Effective Date of this Decree, Defendant shall
2 submit a progress report to the United States pursuant to Section XV (Notices).
3 The report shall document Defendant's actual usage of Non-Demonstrated
4 Compliant Bead at the Facility for the preceding 60 days. The report shall also
5 detail each instance of non-compliance with the requirements of Sections V
6 (Compliance) and VI (Injunctive Relief), and shall summarize the status of
7 Defendant's efforts to achieve full compliance with Rule 1175.

8 25. Not later than 15 days following the end of each calendar month,
9 subsequent to the calendar month (the later of the two) reported upon as required
10 by Paragraph 24, and until Defendant's Request for Termination under Paragraph
11 91 is approved, Defendant shall submit a report to the United States, pursuant to
12 Section XV (Notices). The report shall document Defendant's actual usage of Non-
13 Demonstrated Compliant Bead at the Facility for the preceding calendar month,
14 and shall include the reason for usage of Non-Demonstrated Compliant Bead and
15 the date, type and amount used. The report shall also detail each instance of non-
16 compliance with the requirements of Sections V (Compliance) and VI (Injunctive
17 Relief) during the preceding calendar month, and shall summarize the status of
18 Defendant's efforts to achieve full compliance with Rule 1175.

19 26. Whenever any violation of this Consent Decree or any other event
20 affecting Defendant's performance under this Decree, or the performance of its
21 Facility, may pose an immediate threat to the public health or welfare or the
22 environment, Defendant shall notify the EPA representative listed in Section XV
23 (Notices) orally or by electronic or facsimile transmission as soon as possible, but
24 no later than 24 hours after Defendant first knew of the violation or event. This
25 procedure is in addition to the requirements set forth in the preceding Paragraphs.

26 27. All reports shall be submitted to the persons designated in Section XV
27 (Notices) of this Decree.
28

28. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

29. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. RECORDS

30. In addition to the requirements of Paragraphs VI (Injunctive Relief) and VII (Reporting Requirements), Defendant shall maintain records and provide copies to EPA if requested to do so. The records maintained shall include the following information:

A. The quantity of Non-Demonstrated Compliant Bead used on both a daily and monthly basis; and

B. A recordation of the data required by Paragraph 14.

31. If requested by EPA the information required pursuant to the preceding Paragraph 30 shall be compiled in a comprehensible and chronologically ordered, single record or in one record listing Non-Demonstrated Compliant Bead use and a separate record documenting the RTO temperature, Bead Aging Operation air temperature and negative pressure and the manometer test results and action taken on the magnehelics.

32. Pursuant to 1175(e), Defendant shall maintain daily records of operations which include at least the following information: the amount of raw material processed, the equipment used, and the type of blowing agent used.

33. Defendant shall allow EPA personnel to enter into the Facility at all reasonable times without prior notice for the purpose of taking samples, conducting tests, observing operations, or reviewing records required to be kept pursuant to

1 this Consent Decree. This provision in no way limits or otherwise affects any right
2 of entry held by EPA pursuant to applicable federal laws, regulations, or permits.

3 IX. STIPULATED PENALTIES

4 34. Defendant shall be liable for stipulated penalties to the United States
5 for violations of this Consent Decree as specified below, unless excused under
6 Section X (Force Majeure). A violation includes failing to perform any obligation
7 required by the terms of this Decree according to all applicable requirements of this
8 Decree and within the specified time schedules established by or approved under
9 this Decree.

10 35. Defendant shall notify EPA in writing of any failure to meet Consent
11 Decree requirements for which stipulated penalties may be due as soon as it has
12 knowledge of such failure. In addition, the United States may identify stipulated
13 penalties based on any information it acquires.

14 36. For each of the instances listed below, upon written demand of the
15 United States, Defendant shall pay the following stipulated penalties in the
16 following amounts:

17 37. Failure to pay the civil penalty required to be paid under Section IV
18 (Civil Penalty) of this Decree when due: \$ 1,000 per day for each day that payment
19 is late.

20 38. For each failure to comply with the requirements of Section V
21 (Compliance) or Paragraphs 17 or 18: \$ 3,000 per violation/per day.

22 39. For each day in which Defendant fails to comply with the EPS bead
23 limitations set forth in Paragraph 15: \$ 3,000 per violation/per day.

24 40. For each month in which Defendant fails to comply with the EPS bead
25 limitations set forth in Paragraph 16: \$ 5,000 per violation/per month.

26 41. For each failure to comply with Paragraph 14:

27 A. For each failure to operate as required by Paragraph 14:
28 \$2,200 per violation/per day.

1 B. For each failure to record information as required by
2 Paragraph 14: \$2,000 per violation/per day.

3 C. For each failure to test, replace or remove a magnehelic as
4 required by Paragraph 14: \$2,500.

5 42. For each violation of Paragraph 19: \$2,000 per violation/per day.

6 43. For each failure to submit or create a report as required by

7 Paragraph(s) 22-25:

<u>Per Violation/Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1,000	15th through 30th day
\$ 1,500	31st day and beyond

12 44. For each failure to create, maintain or submit records as required by
13 Paragraph(s) 30-32: \$ 2,000 per violation.

14 Accrual of Stipulated Penalties

15 45. Stipulated penalties under this Section shall begin to accrue on the day
16 after performance is due or on the day a violation occurs, whichever is applicable,
17 and shall continue to accrue until performance is satisfactorily completed or until
18 the violation ceases. Penalties shall accrue regardless of whether EPA has notified
19 Defendant of a violation.

20 46. Stipulated penalties shall accrue simultaneously for
21 separate violations of this Consent Decree.

22 47. Defendant shall pay any stipulated penalty within 10 days
23 of receiving the United States' written demand.

24 48. Stipulated penalties shall continue to accrue as provided in
25 Paragraph 45, during any Dispute Resolution, but need not be paid until the
26 following:

27 A. If the dispute is resolved by agreement or by a decision of EPA
28 that is not appealed to the Court, Defendant shall pay accrued

1 penalties determined to be owing, together with interest, to the United
2 States within 10 days of the effective date of the agreement or the
3 receipt of EPA's decision or order.

4 B. If the dispute is appealed to the Court and the United States
5 prevails in whole or in part, Defendant shall pay all accrued penalties
6 determined by the Court to be owing, together with interest, within 60
7 days of receiving the Court's decision or order, except as provided in
8 Subparagraph C, below.

9 C. If any Party appeals the District Court's decision, Defendant
10 shall pay all accrued penalties determined to be owing, together with
11 interest, within 10 days of receiving the final appellate court decision.

12 49. Unless otherwise provided in this Consent Decree,
13 obligations of Defendant under the provisions of this Consent Decree after the
14 signing, but prior to the Effective Date, shall be legally enforceable from the date
15 this Consent Decree is signed by Defendant. Liability for stipulated penalties, if
16 applicable, shall accrue for violations of such obligations and payment of such
17 stipulated penalties may be demanded by the Plaintiff as provided in Paragraphs 45
18 and 47 of the Decree.

19 Payment of Stipulated Penalties

20 50. Defendant shall pay stipulated penalties owing to the
21 United States in the manner set forth and with the confirmation notices required by
22 Paragraph 11, except that the transmittal letter shall state that the payment is for
23 stipulated penalties and shall state for which violation(s) the penalties are being
24 paid.

25 51. Defendant shall not deduct stipulated penalties paid under
26 this Section in calculating its federal income tax.
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52. If Defendant fails to pay stipulated penalties according to the terms of this Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

53. Nothing in this paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

54. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Decree or applicable law.

X. FORCE MAJEURE

55. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" include anticipating any potential Force Majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

56. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed Force Majeure event. Defendant shall also provide written notice, as provided in Section XV (Notices) of this Decree, within 7 days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s);

1 Defendant's past and proposed actions to prevent or minimize any delay; a
2 schedule for carrying out those actions; and Defendant's rationale for attributing
3 any delay to a Force Majeure event. Failure to provide oral and written notice as
4 required by this Paragraph shall preclude Defendant from asserting any claim of
5 Force Majeure.

6 57. If the United States agrees that a Force Majeure event has
7 occurred, the United States may agree to extend the time for Defendant to perform
8 the affected requirements for the time necessary to complete those obligations. An
9 extension of time to perform the obligations affected by a Force Majeure event
10 shall not, by itself, extend the time to perform any other obligation.

11 58. If the United States does not agree that a Force Majeure
12 event has occurred, or does not agree to the extension of time sought by Defendant,
13 the United States' position shall be binding, unless Defendant invokes Dispute
14 Resolution under Section XI (Dispute Resolution) of this Consent Decree. In any
15 such dispute, Defendant bears the burden of proving, by a preponderance of the
16 evidence, that each claimed Force Majeure event is a Force Majeure event, that
17 Defendant gave the notice required by Paragraph 56, that the Force Majeure event
18 caused any delay Defendant claims was attributable to that event, and that
19 Defendant exercised best efforts to prevent or minimize any delay caused by the
20 event.

21 **XI. DISPUTE RESOLUTION**

22 59. Unless otherwise expressly provided for in this Consent
23 Decree, the dispute resolution procedures of this Section shall be the exclusive
24 mechanism to resolve disputes arising under or with respect to this Consent
25 Decree.
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1 Informal Dispute Resolution

2 60. Any dispute subject to Dispute Resolution under this
3 Consent Decree shall first be the subject of informal negotiations. The dispute
4 shall be considered to have arisen when Defendant sends the United States a
5 written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in
6 dispute. The period of informal negotiations shall not exceed 20 days from the
7 date the dispute arises, unless that period is modified by written agreement. If the
8 Parties cannot resolve a dispute by informal negotiations, then the position
9 advanced by the United State shall be considered binding unless, within 15 days
10 after the conclusion of the informal negotiation period, Defendant invokes formal
11 dispute resolution procedures as set forth below.

12 Formal Dispute Resolution

13 61. In any dispute under this Section that is not resolved
14 informally, Defendant shall invoke formal dispute resolution procedures, within the
15 time period provided in the preceding Paragraph, by serving on the United States,
16 in accordance with Section XV (Notices), a written Statement of Position on the
17 matter in dispute, including any supporting factual data, analysis, opinion, or
18 documentation.

19 62. Within 45 days after receipt of Defendant's Statement of
20 Position, EPA will serve on Defendant its Statement of Position, including any
21 supporting factual data, analysis, opinion, or documentation. Within 15 days after
22 receipt of EPA's Statement of Position, Defendant may submit a reply.

23 63. An administrative record of the dispute shall be
24 maintained by EPA and shall contain all Statements of Position, including
25 supporting documentation, submitted pursuant to this Paragraph. Where
26 appropriate, EPA may allow submission of supplemental statements of position by
27 the Parties to the dispute.

1 64. A designated individual at EPA Region IX, will issue a
2 final decision resolving the matter in dispute. The decision of this individual shall
3 be binding upon Defendant, subject only to the right to seek judicial review, in
4 accordance with the following Paragraph.

5 65. Defendant may seek judicial review of the dispute by filing
6 with the Court and serving on the United States, in accordance with Section XV
7 (Notices) of the Decree, a motion requesting judicial resolution of the dispute. The
8 motion must be filed within 15 days of receipt of EPA's decision pursuant to the
9 preceding Paragraph. The motion shall contain Defendant's written Statement of
10 Position on the matter in dispute, including any supporting factual data, analysis,
11 opinion, or documentation, and shall set forth the relief requested and any schedule
12 within which the dispute must be resolved for orderly implementation of the
13 Decree.

14 66. The United States shall respond to Defendant's motion
15 within the time period allowed by the Local Rules of this Court. Defendant may
16 file a reply memorandum, to the extent permitted by the Local Rules.

17 67. In any proceeding to review a decision of EPA, Defendant
18 shall have the burden of demonstrating that the decision is arbitrary and capricious
19 or otherwise not in accordance with law. Judicial review of such decision shall be
20 on the administrative record compiled in accordance with Paragraph 63.

21 68. The invocation of dispute resolution procedures under this
22 Section shall not, by itself, extend, postpone, or affect in any way any obligation of
23 Defendant under this Decree, unless and until final resolution of the dispute so
24 provides. Stipulated penalties with respect to the disputed matter shall continue to
25 accrue from the first day of noncompliance, but payment shall be stayed pending
26 resolution of the dispute as provided in Paragraph 48. If Defendant does not
27 prevail on the disputed issue, stipulated penalties shall be assessed and paid as
28 provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

69. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility at all reasonable times, upon presentation of official credentials, to:

- A. monitor the progress of activities required under this Decree;
- B. verify any data or information submitted to the United States in accordance with the terms of this Decree;
- C. obtain documentary evidence, including photographs and similar data; and
- D. assess Defendant's compliance with this Decree.

70. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

71. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA at the address and to the person identified as the EPA contact in Section XV (Notices).

1 72. Defendant may assert that certain documents, records, or
2 other information is privileged under the attorney-client privilege or any other
3 privilege recognized by federal law. If Defendant asserts such a privilege, it shall
4 provide the following: (1) the title of the document, record, or information; (2) the
5 date of the document, record, or information; (3) the name and title of each author
6 of the document, record, or information; (4) the name and title of each addressee
7 and recipient; (5) a description of the subject of the document, record, or
8 information; and (6) the privilege asserted by Defendant. However, no documents,
9 records, or other information created or generated pursuant to the requirements of
10 this Decree shall be withheld on grounds of privilege.

11 73. Defendant may also assert that information required to be
12 provided under this Section is protected as Confidential Business Information
13 ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to
14 protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

15 74. This Consent Decree in no way limits or affects any right
16 of entry and inspection, or any right to obtain information, held by the United
17 States pursuant to applicable federal laws, regulations, or permits, nor does it limit
18 or affect any duty or obligation of Defendant to maintain documents, records, or
19 other information imposed by applicable federal or state laws, regulations, or
20 permits.

21 **XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

22 75. This Decree resolves the civil claims of the United States
23 for the violations alleged in the Complaint filed in this action and the June 30,
24 2004 Finding and Notice of Violation (Docket No. R9-04-09) issued by EPA,
25 through the date of lodging of this Consent Decree. This Consent Decree also
26 resolves any civil claims the United States may have against the officers, directors,
27 and employees of Premier for the violations alleged in the Complaint or in the June
28 30, 2004 Finding and Notice of Violation, but only to the extent said officers,

1 directors, and employees were acting in their official capacity as officers, directors,
2 and employees, and only as to the actions of Premier as described in said
3 Complaint and Finding and Notice of Violation.

4 76. The United States reserves all legal and equitable remedies
5 available to enforce the provisions of this Decree, except as expressly stated in
6 Paragraph 75.

7 77. This Decree shall not be construed to limit the rights of the
8 United States to obtain penalties or injunctive relief under the CAA, implementing
9 regulations, the California SIP or under other federal laws, regulations, or permit
10 conditions, except as expressly specified in Paragraph 75.

11 78. The United States further reserves all legal and equitable
12 remedies to address any imminent and substantial endangerment to the public
13 health or welfare or the environment arising at, or posed by, Defendant's Facility,
14 whether related to the violations addressed in this Consent Decree or otherwise.

15 79. This Decree is not a permit, or a modification of any
16 permit, under any federal, State or local laws or regulations. Defendant is
17 responsible for achieving and maintaining complete compliance with all applicable
18 federal, State, and local laws, regulations, and permits; and Defendant's compliance
19 with this Decree shall be no defense to any action commenced pursuant to any such
20 laws, regulations, or permits.

21 80. The United States does not, by its consent to the entry of
22 this Decree, warrant or aver in any manner that Defendant's compliance with any
23 aspect of this Decree will result in compliance with provisions of the CAA or
24 Rule 1175, or with any other provisions of federal, State, or local laws, regulations,
25 or permits.

81. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

82. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIV. COSTS

83. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XV. NOTICES

84. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

DOJ

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08413

and

EPA, REGION IX

Director, Air Division
Attention: Air-5
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 To Premier:

2 Michael R. Wall
3 President
4 Premier Industries, Inc.
11126 Vipond Dr. NW
Gig Harbor, WA 98329

5 and

6 Harry Edward Grant
7 Riddell Williams P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154

8 To Insulfoam:

9 Carlisle SynTec Incorporated
10 c/o Carlisle Companies Incorporated
13925 Ballantyne Corporate Place
11 Suite 400
Charlotte, NC 28277
12 Attention: Scott C. Selbach

13 and

14 Donna Diamond
15 Weston Benshoof Rochefort Rubalcava MacCuish LLP
333 South Hope Street
16 Sixteenth Floor
Los Angeles, CA 90071

17 85. Any Party may, by written notice to the other Parties,
18 change its designated notice recipient or notice address provided above.

19 86. Unless otherwise agreed to by the Parties in writing,
20 notifications and submissions to or communications with the United States shall be
21 deemed submitted on the date they are postmarked and sent either by overnight
22 receipt mail service or by certified or registered mail, return receipt requested.

23 **XVI. EFFECTIVE DATE**

24 87. The Effective Date of this Decree shall be the date upon
25 which this Decree is entered by the Court.

26 **XVII. RETENTION OF JURISDICTION**

27 88. The Court shall retain jurisdiction over this case until
28

1 termination of this Decree, for the purpose of resolving disputes arising under this
2 Decree or entering orders modifying this Decree, pursuant to Sections XI (Dispute
3 Resolution) and XVIII (Modification), or effectuating or enforcing compliance
4 with the terms of this Decree.

5 XVIII. MODIFICATION

6 89. The terms of this Consent Decree may be modified only by
7 a subsequent written agreement signed by all the Parties. Where the modification
8 constitutes a material change to this Decree it shall be effective only upon approval
9 by the Court.

10 90. Any disputes concerning modification of this Decree shall
11 be resolved pursuant to Section XI (Dispute Resolution) of this Decree, provided,
12 however, that, instead of the burden of proof provided by Paragraph 67, the Party
13 seeking the modification bears the burden of demonstrating that it is entitled to the
14 requested modification in accordance with Federal Rule of Civil Procedure 60(b).

15 XIX. TERMINATION

16 91. After Defendant has completed the requirements of
17 Sections V, VI and VII (Compliance), (Injunctive Relief) (Reporting
18 Requirements) of this Decree and has thereafter maintained continuous satisfactory
19 compliance with this Decree for a period of two years and has paid the civil penalty
20 as required by Section IV (Civil Penalty), any accrued stipulated penalties required
21 by Section IX (Stipulated Penalties) and any enforcement expenses required by
22 Section XIV (Costs) of this Decree, Defendant may serve upon the United States a
23 Request for Termination stating that Defendant has satisfied all conditions for
24 termination as set forth above, together with all necessary supporting
25 documentation.

26 92. Following receipt by the United States of Defendant's Request for
27 Termination, the Parties shall confer informally concerning the Request and any
28 disagreement that the Parties may have as to whether Defendant has satisfactorily

1 complied with the requirements for termination of this Consent Decree. If the
2 United States agrees that the Decree may be terminated, the Parties shall submit,
3 for the Court's approval, a joint stipulation terminating the Decree.

4 93. If the United States does not agree that the Decree may be
5 terminated, Defendant may invoke Dispute Resolution under Section XI (Dispute
6 Resolution) of this Decree. However, Defendant shall not seek Dispute Resolution
7 of any dispute regarding termination under Paragraph 61 of Section XI (Dispute
8 Resolution), until 45 days after service of its Request for Termination.

9 **XX. PUBLIC PARTICIPATION**

10 94. This Consent Decree shall be lodged with the Court for a
11 period of not less than 30 days for public notice and comment in accordance with
12 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its
13 consent if the comments regarding the Consent Decree disclose facts or
14 considerations indicating that the Consent Decree is inappropriate, improper, or
15 inadequate.

16 95. Defendant consents to entry of this Consent Decree
17 without further notice and agrees not to withdraw from or oppose entry of this
18 Consent Decree by the Court or to challenge any provision of the Decree, unless
19 the United States has notified Defendant in writing that it no longer supports entry
20 of the Decree.

21 **XXI. SIGNATORIES/SERVICE**

22 96. Each undersigned representative of Defendant and the
23 Assistant Attorney General for the Environment and Natural Resources Division of
24 the Department of Justice certifies that he or she is fully authorized to enter into the
25 terms and conditions of this Decree and to execute and legally bind the Party he or
26 she represents to this document.

27 97. This Consent Decree may be signed in counterparts, and
28 its validity shall not be challenged on that basis.

1 98. Defendant agrees to accept service of process by mail with
2 respect to all matters arising under or relating to this Consent Decree and to waive
3 the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of
4 Civil Procedure and any applicable Local Rules of this Court including, but not
5 limited to, service of a summons.

6 99. Defendant shall identify, on the attached signature page,
7 the name and address of an agent who is authorized to accept service of process
8 with respect to the Complaint and all matters arising under or relating to this
9 Consent Decree.

10 XXII. INTEGRATION

11 100. This Consent Decree constitutes the final, complete, and
12 exclusive agreement and understanding among the Parties with respect to the
13 settlement embodied in the Decree and supersedes all prior agreements and
14 understandings, whether oral or written, concerning the settlement embodied
15 herein. Other than deliverables that are subsequently submitted and approved
16 pursuant to this Decree, no other document, nor any representation, inducement,
17 agreement, understanding, or promise, constitutes any part of this Decree or the
18 settlement it represents, nor shall it be used in construing the terms of this Decree.

19 XXIII. FINAL JUDGMENT

20 101. Upon approval and entry of this Consent Decree by the Court,
21 this Consent Decree shall constitute a final judgment of the Court as to the United
22 States and Premier.

23
24 IT IS SO ORDERED and ENTERED.

25
26 DATED: _____

FILE COPY

27 UNITED STATES DISTRICT JUDGE

1 FOR PLAINTIFF UNITED STATES OF AMERICA:

2
3 
4 ELLEN MAHAN

5 Deputy Section Chief
6 Environment and Natural Resources Division
7 United States Department of Justice
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9 _____
10 Date
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1 FOR PREMIER INDUSTRIES, INC.:
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June 26th 2007.

7 Date

8 If different from above, the following is the name and address of Premier's agent
9 for service of process, and the name and address of Premier's counsel. Counsel
10 may act as agent for service.

11 Agent for Service:

Attorney:

12 Name Harry Edward Grant
13 Riddell Williams P.S.
14 1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
Address

Name Stephen E. Hyam
Clark & Trevithick
800 Wilshire Blvd., 12th Flr.
Los Angeles, CA 90017
Address

16 Attorney:

17
18 Name Harry Edward Grant
19 Riddell Williams P.S.
20 1001 Fourth Avenue, Suite 4500
21 Seattle, WA 98154
22 Address
23
24
25
26
27
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1 THE UNDERSIGNED, as provided in Paragraph 4 hereof, agrees to the terms of
2 this Consent Decree in the matter of *United States of America v. Premier*
3 *Industries, Inc.* (C.D. Ca.), relating to the Facility at 5635 Schaefer Avenue, Chino,
4 San Bernardino County, California:

5
6 FOR INSULFOAM LLC:
7

8 July 9, 2007 u

9 Date

10 If different from above, the following is the name and address of Insulfoam's agent
11 for service of process, and the name and address of Insulfoam's counsel. Counsel
12 may act as agent for service.

13 Agent for Service:

Attorney:

14 Name _____


Name Donna Diamond
Weston, Benshoof, et al.
333 S. Hope St., 16th Floor
Los Angeles, CA 90071

15
16
17 Address _____


Address _____

1 For the U.S. Environmental Protection Agency:
2

3
4 Dated: 7/20/07

5  WAYNE NASTRI
6 Regional Administrator
7 U.S. Environmental Protection Agency,
8 Region IX
9 San Francisco, CA 94105

10 Dated: 7/20/07

11  GRANTA Y. NAKAYAMA
12 Assistant Administrator
13 Office of Enforcement and Compliance Assurance
14 U.S. Environmental Protection Agency
15 Washington, D.C.

16 Of COUNSEL:

17 ANN LYONS
18 Assistant Regional Counsel
19 U.S. Environmental Protection Agency,
20 Region IX
21 San Francisco, CA 94105
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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2007 I mailed by Federal Express the foregoing Consent Decree of Plaintiff and Defendant to the Clerk of the Court. I further certify that on August 27, 2007 I mailed the foregoing document by first-class mail to the following:

Agent for Service for Premier Industries, Inc.
Harry Edward Grant
Riddell Williams P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154

Agent for Service for Insulfoam LLC
Donna Diamond
Weston, Benshoof, et al.
333 S. Hope St., 16th Floor
Los Angeles, CA 90071

Counsel for Environmental Protection Agency
Ann Lyons
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, ORC-2
San Francisco, CA 94105

By: CHRISTY L. KING
E-mail:
Wisconsin Bar Number: 1038373
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044
Telephone: (202) 514-1707
Facsimile: (202) 514-2583